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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,413	02/15/2002	Thurein M. Htoo	800189-11 (6829-60483)	3281
37490	7590	06/07/2004	EXAMINER	
CARPENTER & KULAS, LLP 1900 EMBARCADERO ROAD SUITE 109 PALO ALTO, CA 94303			RINEHART, KENNETH	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

clo 16

## Office Action Summary

Application No.

10/077,413

Applicant(s)

HTOO ET AL.

Examiner

Kenneth B Rinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-18 and 44-61 is/are allowed.
- 6) ☒ Claim(s) 1-6, 19-22, 25, 26, 28, 30-33, 36-39, 42 and 43 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 23, 24, 27, 29, 34, 35, 40 and 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 15.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

The following Office Action is in response to a request via telephone on 4/29/04 for clarification of the prior Office Action by applicant's representative. A subsequent telephonic interview was held on May 19<sup>th</sup> 2004 (see Examiner's Interview Summary) upon a review of the record and an expanded search of the prior art, the Office Action of April 5, 2004 has been withdrawn for the purpose of instituting a new Office Action that is given below.

In view of the appeal brief filed on 4/5/04, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 37, 39 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandola (5616242). Mandola shows a flask having a structure defining an opening (12, fig. 3); a first filter member disposed in the opening (15, fig. 3); and a second filter member disposed in the opening juxtaposedly to the first filter member (14, fig. 3), and having no absorbing material positioned between the first and second filter members (fig. 3), said first and second filter members are juxtaposed with respect to each other (fig. 3), said first filter member and said second filter member have no absorbing material disposed between them (fig. 3). Regarding the language "for holding substances during drying" this language is an intended use which is given no patentable weight for examination purposes.

Claims 1, 4-6, 19-22, 25, 26, 28, 30-33, 36, 37, 38, 39, 42, 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Roman. Roman shows a flask having a structure defining an opening (item 40 constitutes the container of the flask and items 11 illustrates the portion which is narrowed or necked at the outlet of the container, figs. 2, 3), a first filter member disposed in the opening (18, fig. 1) and a second filter member disposed in the opening juxtaposedly to the first filter member (16, fig. 1), a retainer ring engaged to the flask for retaining the first and second filter members in the opening (stepped portion at 15, fig. 1), said first filter member has a higher flexibility than said second filter member (18, fig. 1), said structure of said flask additionally comprises a second opening (opening at top of 40, fig. 3), and having the capability of being contacted by the first filter when the first filter is flexed (col. 2, line 24), the first filter member has a higher flexibility than the second filter member (supporting disk 16, filtering material 18, fig. 1), said first filter member includes a flexed structure in contact with the second filter member (supporting disk 16, filtering material 18, fig. 1), said first filter

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member and said second filter member have no absorbing material disposed between them (fig. 1, fig. 2), said retainer ring includes an inwardly protruding lip extending over a portion of the second filter member disposed between the inwardly protruding lip and the flask (fig. 2, fig. 1), a first filter member disposed over the opening and having a flexed structure (18, fig. 1); and a second filter member disposed over the opening and in contact with the flexed structure (16, fig. 1) a retainer ring engaged to the flask and having an inwardly protruding lip extending over the second filter for retaining the first and second filter members over the opening of the flasks (fig. 1, fig. 2), said first filter member comprises a flexed structure in contact with the second filter member (figs. 1 and 2). Regarding the language "for holding substances during drying" this language is an intended use which is given no patentable weight for examination purposes.

Claims 1-4, 37, 39 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Rossi et al. Rossi et al shows a flask having a structure defining an opening (10, fig. 1), a first filter member disposed in the opening (52, fig. 1) and a second filter member disposed in the opening juxtaposedly to the first filter member (54, fig. 1), said first filter member comprises at least one aperture sized to preclude the passing of bacteria therethrough (col. 2, lines 8-10), the first filter members comprise a plurality of apertures having an average aperture opening ranging from about 0.10 micrometers to about 0.65 micrometers (col. 1, line 28) a retainer ring engaged to the flask for retaining the first and second filter members in the opening (56, fig. 1), and a second filter member disposed in the opening and having no absorbing material positioned between the first and second filter members (fig. 1), said first filter member and said second filter member are juxtaposed with respect to each other (fig. 1). Regarding the

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language "for holding substances during drying" this language is an intended use which is given no patentable weight for examination purposes.

***Allowable Subject Matter***

Claims 9-18, 44-61 are allowed.

Claims 7, 8, 23, 24, 27, 29, 34, 35, 40, 41, 44-50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 40, 41, 50, 55-56 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30 -4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KBR

  
KENNETH RINEHART  
PRIMARY EXAMINER